De minimis Rules Guidelines
§ 734.4 and Supplement No. 2 to part 734 of the EAR
(as modified on 20 November 2015)

- **IF ...**
  - Non-U.S.-made commodity incorporates controlled U.S.-origin commodities
  - Non-U.S.-made commodity is 'bundled' with controlled U.S.-origin software,
  - Non-U.S.-made software is commingled with controlled U.S.-origin software, or
  - Non-U.S.-made technology is commingled with controlled U.S.-origin technology,

- **THEN**... the non-U.S.-made item is *subject to the EAR* if the U.S.-origin controlled content exceeds:
  - "600 series" & 9x515 .a - .x items, 'see-through carve-out'[1] item: 0% to Country Group D:5, 25% to all other destinations.
  - "600 series" & 9x515 .y items: 0% to China or Country Groups E:1 or E:2, unlimited to all other destinations.
  - Non-"600 series," non-9x515 or non-'see-through carve-out'[1] items: 10 % to Country Group E:1, 25% to all other destinations.
  - Non-"600 series," non-9x515 or non-'see-through carve-out'[1] items AT only: 10% to Country Group E:1, unlimited to all other destinations.
  - EAR99: 10 % to N. Korea and Syria (except food and medicines), 25% for Cuba, unlimited to all other destinations.

  - **"Controlled content"** = US-origin items that require a license or License Exception to the ultimate destination of the non-U.S.-made product. 'See-through carve-out items'[1] are always counted as controlled content.
  - EAR99 items are considered "controlled content" for certain sanctioned countries.
  - Fair Market Value of the "controlled content" is needed to calculate *de minimis* percentage

  - **Content that you don't have to count**:

    License Exception GBS or items that do not require a license to the ultimate destination of the non-U.S. made product (NLR designated items).

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[1] *'**See-through carve-out item**' - Articles described on the U.S. Munitions List (22 CFR part 121) that pursuant to a specific carve-out note are subject to the EAR when, prior to export, reexport, retransfer, or temporary import, they are integrated into and included as an integral part of an item subject to the EAR. These items are always considered controlled content for purposes of the de minimis rule.*

- *USML Category VIII(h)(2)-(5), (7), (13), (14), (17)-(19), and (21)-(26) when incorporated into a 9A610 military aircraft*
- *USML Category XV(c)(3) and (e) when incorporated into an item subject to the EAR*

- **Content that is <u>not</u> eligible for *de minimis* treatment**
  - U.S.-origin "600 series," 9x515 and 'see-through carve-out content when the non-U.S.-made items are destined to Country Group D:5 of Supp. No. 1 to Part 740.
  - Certain 9E003 technology
  - Certain U.S.-origin components of high performance computers
  - Encryption 5E002, and encryption commodities and software that don't meet the eligibility criteria in § 734.4(b)
  - QRS 11 if in commercial standby instrument system or commercial aircraft w/such system
  - Non-U.S.-made military commodities that incorporate cameras classified under ECCN 6A003.b.4.b

- **U.S. items are 'incorporated' when all of the following conditions are met:**
  - They are essential to the functioning of the non-U.S.-made equipment,
  - They are customarily included in the sale of non-U.S.-made items, and
  - They are exported abroad with the non-U.S.-made item.

- **Bundling**
  - Software that is configured for a specific commodity, but is not necessarily physically integrated into the commodity.
  - Eligible software is software that is listed on the Commerce Control List (CCL) and is controlled for anti-terrorism (AT) reasons or software that is designated EAR99 (subject to the EAR, but not listed on the CCL).

- **One-time report required for technology**
  - Percentage of U.S. content by value
  - Description of your calculations
  - Values, assumptions, methodologies
  - Export price of U.S. content
  - Description and fair market value of the non-U.S.-made technology

- **If over the *de minimis* limit ...**
  - Classify the non-U.S.-made product (self-classification vs BIS classification)
  - Determine License Requirements
  - Determine License Exception eligibility
  - Obtain any necessary authorization